

FILED
MISSOULA, MT

2007 MAY 31 AM 8 14

PATRICK E. DUFFY

BY _____
CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION

LEROY JAMES SCHMITZ,)	CV 07-01-H-DWM-RKS
)	
Plaintiff,)	
)	
vs.)	ORDER
)	
KATHY HAUGLAND, MIKE FERRITER,)	
and MIKE MAHONEY,)	
)	
Defendants.)	
_____)	

United States Magistrate Judge Keith Strong entered his Findings and Recommendation on this matter on May 3, 2007. In response, Schmitz filed a petition to amend the complaint, which the Court shall construe as objections to the Findings and Recommendation. Schmitz is therefore entitled to de novo review of the record. 28 U.S.C. § 636(b)(1). The parties are familiar with the factual and procedural history so they will be recited only as necessary.

Judge Strong concluded that Schmitz's complaint, the supplement to the complaint, and the amended complaint should be

dismissed with prejudice and I agree. They are dismissed because in accordance with the requisite preliminary screening, Schmitz's claims fail to meet the threshold set forth in the federal statutes that govern prisoner and in forma pauperis proceedings. 28 U.S.C. §§ 1915(e)(2), 1915A(a); 42 U.S.C. § 1997e(c)(1); *Lopez v. Smith*, 203 F.3d 1122, 1126 (9th Cir. 2000) (en banc). Nor can they be cured via amendment.

Schmitz's allegations fail because they do not state claims for which relief may be granted. He has not submitted a claim that implicates his right to due process. Judge Strong also searched for possible allegations that might trigger the Eight Amendment's guarantees against cruel and unusual punishment and found none that were "conceivably" close. Consequently, the Court will deny the motion to amend. Schmitz will not be allowed to repeatedly refashion his pleadings through a trial and error process. If Schmitz had a claim for cruel and unusual punishment under the 8th Amendment it should have been presented before Judge Strong's observations in his Findings and Recommendation.

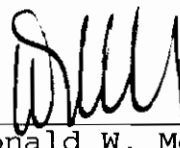
Accordingly, based upon the foregoing I adopt Judge Strong's Findings and Recommendation (dkt #14) in full: Plaintiff's complaint, supplement to the complaint, and amended complaint (dks #1,3,7) are DISMISSED WITH PREJUDICE;

IT IS FURTHER ORDERED that the motion to amend (dkt #15) is DENIED; and

IT IS CERTIFIED that any appeal from this order will not be taken in good faith.

Plaintiff is advised that this action counts as one strike against him for failure to state a claim on which relief may be granted pursuant to 28 U.S.C. § 1915(g).

DATED this 31st day of May, 2007.



Donald W. Molloy, Chief Judge
United States District Court
